

Legis. Prog.

January 13, 2005

Memorandum 2005-1

2005 Legislative Program: Status of Bills

This memorandum outlines the Commission's 2005 legislative program. We have a heavy load this session that will consume a significant amount of staff resources.

Ownership of Amounts Withdrawn from Joint Account

This recommendation would reverse recent case law concluding that a party to a joint account in a financial institution may withdraw sums on deposit in the account without having to account to the other parties. See *Ownership of Amounts Withdrawn from Joint Account* (June 2004). Assembly Member Harman has introduced the measure as AB 69.

Emergency Rulemaking Under the Administrative Procedure Act

This recommendation would clarify which provisions of the Administrative Procedure Act apply to emergency rulemaking, in particular the publication and judicial review provisions. See *Emergency Rulemaking Under the Administrative Procedure Act* (June 2004). We are in the process of identifying an appropriate author for the measure.

Civil Discovery

The staff is seeking an author for the recommendations on *Civil Discovery: Statutory Clarification and Minor Substantive Improvements* (June 2004) and *Civil Discovery: Correction of Obsolete Cross-References* (Sept. 2004). It is likely that the two proposals will be combined in a single bill.

Several of the conforming revisions for the nonsubstantive reorganization of civil discovery provisions enacted on Commission recommendation last year were "chaptered out" by other bills amending the same sections of the codes. Clean-up legislation is needed to correct these problems. A draft of the necessary amendments and proposed Comments is attached as Exhibit pages 1-10 for the Commission's review and approval. This legislation would implement the conforming revisions previously approved by the Commission and make a few

minor grammatical and technical corrections in the provisions as amended in 2004. These amendments probably will be included in the same bill as the Commission's other proposals on civil discovery.

Financial Privacy

This recommendation would coordinate the California Financial Information Privacy Act (SB 1) with other state laws and extend the Commission's authority to continue work in the area. See *Financial Privacy* (Sept. 2004). We are in the process of identifying an appropriate author for the measure.

Common Interest Development Law

We have two small recommendations on common interest development law for this session — *Preemption of CID Architectural Restrictions* (Nov. 2004) and *Obsolete Cross-References to Former Code of Civil Procedure Section 383* (Nov. 2004). The two will undoubtedly be combined in one bill. We are in the process of identifying an appropriate author for the measure.

Unincorporated Associations

The Commission has two proposals affecting unincorporated associations. See *Unincorporated Association Governance* (Sept. 2004) and *Nonprofit Association Tort Liability* (Nov. 2004). The two will most likely be combined in one bill. We are in the process of identifying an appropriate author for the measure.

Waiver of Privilege by Disclosure

This recommendation would make clear that disclosure of a confidential communication between lawyer and client, physician and patient, or persons in certain other privileged relationships does not waive the privilege unless the disclosure is intentional. See *Waiver of Privilege by Disclosure* (Nov. 2004). We are in the process of identifying an appropriate author for the measure.

Chaptered Out Gov't Code § 71601 Changes

For the second year in a row we obtained enactment of technical cleanup changes to Government Code Section 71601, relating to court employees, only to have them chaptered out by unrelated legislation. We will try again this year. We are keeping an eye out for an appropriate vehicle, such as a court organization omnibus bill.

Resolution of Authority

The Commission decided to seek expansion of its calendar of topics to include oral argument in civil procedure. See *2004-2005 Annual Report* (Nov. 2004).

We are currently working on that study under our general authority to recommend technical and minor substantive revisions to the law. Gov't Code § 8298. However, it is worthwhile to obtain legislative sanction for the project in the event we may want to recommend major substantive revisions. Also, it is helpful to keep the Legislature informed of projects we are undertaking.

Ordinarily, we would include a topic such as this in our annual or biennial resolution re-authorizing previously authorized topics. That resolution also drops from our calendar topics we have completed. This year our Senate member, Bill Morrow, has suggested that we limit the resolution to its primary function of authorizing new studies.

In the past, it could be argued that biennial re-authorization was required under our enabling statute. However, legislation recently enacted on our recommendation modernizing state agency reporting requirements eliminates that implication:

Gov't Code § 8293. Calendar of topics

8293. The commission shall file a report at each regular session of the Legislature that shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. The commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study.

Senator Morrow's suggestion — that the resolution identify those topics listed in our annual report that have not previously been authorized by the Legislature — is consistent with Section 8293. We have requested Legislative Counsel to prepare draft resolution language on that basis.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

**PROPOSED LEGISLATION TO CORRECT
AB 3081 CHAPTERING OUT PROBLEMS**

☞ **Note.** A nonsubstantive reorganization of the Civil Discovery Act was enacted in 2004 on recommendation of the Law Revision Commission. See 2004 Cal. Stat. ch. 182 [AB 3081, Assembly Committee on Judiciary]; *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). That legislation included numerous conforming revisions, some of which were chaptered out by another bill amending the same provision. See Gov't Code § 9605 (in absence of express provision to contrary, statute with higher chapter number prevails over statute with lower chapter number); 182 Cal. Stat. ch. 182, § 63 (subordination clause, subject to specified exceptions). The legislation proposed below would correct these chaptering out problems and also eliminate a few minor technical errors.

SECTION 1. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to ~~paragraph (3) of subdivision (e) of Section 2025~~ Section 2025.260.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 16-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

Comment. Subdivision (a) of Section 1005 is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.

☞ **Note.** A conforming revision of Code of Civil Procedure Section 1005 was included in AB 3081 (Assembly Committee on Judiciary), 2004 Cal. Stat. ch. 182, § 13. This conforming revision was chaptered out by AB 3078 (Assembly Committee on Judiciary), 2004 Cal. Stat. ch. 171, § 3. See 2004 Cal. Stat. ch. 182, § 63 (subordination clause, subject to specified exceptions). The amendment proposed above would correct this chaptering out problem.

SEC. 2. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) “Deposition officer” means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020 Section 2020.420.

(2) “Employee” means any individual who is or has been employed by a witness subject to a subpoena duces tecum. “Employee” also means any individual who is or has been represented by a labor organization that is a witness subject to a subpoena duces tecum.

(3) "Employment records" means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee, or by any labor organization that has represented or currently represents the employee.

(4) "Labor organization" has the meaning set forth in Section 1117 of the Labor Code.

(5) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but does not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice described in subdivision (e), and proof of service as provided in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3 2, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time, as provided in ~~paragraph (1) of subdivision (d) of Section 2020~~ Section 2020.410, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer does not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, and the deposition officer, and the witness a written objection that cites the specific grounds on which production of the employment records should be prohibited.

No witness or deposition officer shall be required to produce employment records after receipt of notice that the motion has been brought by an employee, or after receipt of a written objection from a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected.

The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witnesses and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.


(h) This section may not be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and

which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

Comment. Subdivisions (a) and (d) of Section 1985.6 are amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182. Subdivision (b) is amended to correct a cross-reference. Subdivision (f) is amended to make a grammatical correction.

 **Note.** A conforming revision of Code of Civil Procedure Section 1985.6 was included in AB 3081 (Assembly Committee on Judiciary), 2004 Cal. Stat. ch. 182, § 19. This conforming revision was chaptered out by SB 1465 (Kuehl), 2004 Cal. Stat. ch. 101, § 1. See 2004 Cal. Stat. ch. 182, § 63 (subordination clause, subject to specified exceptions). The amendment proposed above would correct this chaptering out problem and also fix a cross-reference in Section 1985.6(b) and a grammatical error in Section 1985.6(f).

SEC. 3. The heading of Chapter 12 (commencing with Section 2029.010) of Title 4 of Part 4 of the Code of Civil Procedure is amended to read:

CHAPTER 12. ~~DEPOSITION IN~~ DEPOSITION IN ACTION PENDING OUTSIDE CALIFORNIA

Comment. The heading of Chapter 12 is amended to make a grammatical correction.

SEC. 4. Section 1560 of the Evidence Code is amended to read:

1560. (a) As used in this article:

(1) “Business” includes every kind of business described in Section 1270.

(2) “Record” includes every kind of record maintained by a business.

(b) Except as provided in Section 1564, when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in an action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena in any criminal action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, or within 15 days after the receipt of the subpoena in any civil action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, delivers by mail or otherwise a true, legible, and durable copy of all the records described in the subpoena to the clerk of the court ~~or to the judge if there be no clerk~~ or to another person described in subdivision (c) of Section 2026 subdivision

(d) of Section 2026.010 of the Code of Civil Procedure, together with the affidavit described in Section 1561.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of the court, ~~or to the judge thereof if there be no clerk.~~

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are original documents and which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records which are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party in a civil action may direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in ~~paragraph (3) of subdivision (d) of Section 2020~~ Section 2020.420 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's representative or deposition officer. It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena. Disobedience to the deposition subpoena issued pursuant to this subdivision is punishable as provided in ~~subdivision (h) of Section 2020~~ Section 2020.240 of the Code of Civil Procedure.

Comment. Section 1560 is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.

Section 1560 is also amended to delete language authorizing the judge to substitute for the clerk if there is no clerk. Every superior court has a clerk. See Gov't Code §§ 69840 (court clerk's powers, duties, and responsibilities), 71620 (court executive or administrative officer has

authority of a court clerk). See also Code Civ. Proc. § 167 (judge may perform any act court clerk may perform).

☞ **Note.** A conforming revision of Evidence Code Section 1560 was included in AB 3081 (Assembly Committee on Judiciary), 2004 Cal. Stat. ch. 182, § 32. This conforming revision was chaptered out by AB 1249 (Pacheco), 2004 Cal. Stat. ch. 162, § 1. See 2004 Cal. Stat. ch. 182, § 63 (subordination clause, subject to specified exceptions). The amendment proposed above would correct this chaptering out problem.

SEC. 5. Section 12972 of the Government Code is amended to read:

12972. (a) The commission shall conduct all actions and procedures in accordance with its procedural regulations.

(b) (1) If the commission does not have a procedural regulation on a particular issue, the commission shall rely upon pertinent provisions of the Administrative Procedure Act (Chapter 4 (commencing with Section 11370) of Part 1).

(2) Notwithstanding paragraph (1), the Administrative Adjudication Bill of Rights set forth in Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1, and the rules for judicial review set forth in Section 11523, shall apply to the commission.

(c) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

Comment. Subdivision (b) of Section 12972 is amended to correct a cross-reference. Subdivision (c) is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.

☞ **Note.** A conforming revision of Government Code Section 12972 was included in AB 3081 (Assembly Committee on Judiciary), 2004 Cal. Stat. ch. 182, § 43. This conforming revision was chaptered out by AB 2870 (Mullin), 2004 Cal. Stat. ch. 647, § 7. See 2004 Cal. Stat. ch. 182, § 63 (subordination clause, subject to specified exceptions). The amendment proposed above would correct this chaptering out problem and also correct a cross-reference in newly-added subdivision (b).

SEC. 6. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or any evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a ~~clergyman~~ member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, “documentary evidence” includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in ~~Section 2018~~ Chapter 4 (commencing with Section 2018.010) of Title

4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

Comment. The introductory paragraph of subdivision (c) of Section 1524 is amended to conform to the terminology used in Evidence Code Section 1030. Paragraph (2) of subdivision (c) is amended to correct a cross-reference. Subdivision (h) is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.

☞ **Note.** A conforming revision of Penal Code Section 1524 was included in AB 3081 (Assembly Committee on Judiciary), 2004 Cal. Stat. ch. 182, § 51. This conforming revision was chaptered out by SB 2 (Speier), 2004 Cal. Stat. ch. 2, § 8 (4th Ex. Sess.). See 2004 Cal. Stat. ch. 182, § 63 (subordination clause, subject to specified exceptions). The amendment proposed above would correct this chaptering out problem and also correct a cross-reference in Section 1524(c)(2).